

Office Lease and Funding Agreement

(Avenida Guadalupe Association)

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1. Basic Information, Definitions.

Effective Date: The effective date of the Authorizing Ordinance

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Assistant Director, CIMS Real Estate Division)

Tenant: Avenida Guadalupe Association, Inc. a Texas non-profit corporation

Tenant's Address: 1313 Guadalupe Street, Suite 100, San Antonio, TX 78207

Premises: Office, retail and residential buildings on the North and South Sides of Guadalupe Avenue and the South side of El Paso Avenue, West of Brazos and East of San Jacinto, as more particularly described on **Exhibit A**, which is incorporated by reference for all purposes

Permitted Use: Sublease, maintain, and manage the Premises consistently with the Public Purpose

Public Purpose: Maintaining the structures in the Premises, and acting with organizations and businesses promoting and celebrating Hispanic culture to generate and maintain vitality and development in the neighborhood in which the Premises are located.

Commencement Date: September 1, 2009

Initial Term: 20 years

Base Rent: Tenant need pay no money-denominated Base Rent, but it must further the Public Purpose

Address for Payment of Rent: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Assistant Director, CIMS Real Estate Division)
(Bexar County, Texas)

Tenant's FYE: September 30th

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Tenant has previously been in possession of the Premises under different leases for different parts of the Premises ("Prior Leases"). This Lease consolidates all parts of the Premises under this Lease and restates the parties' rights and obligations regarding the Premises. This Lease is a novation of the Prior Leases between Landlord and Tenant regarding the Premises or any part of them. A schedule of the Prior Leases is attached hereto and incorporated herein as **Exhibit X**.

3. Rent.

Rent includes all sums due to Landlord under this Lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

4. Revenue Waterfall, Budgeting.

4.01. Tenant must pay or retain gross rental revenue according to the following waterfall ("Waterfall"):

- A. Payment of expenses for non-routine emergency repairs prudently required to keep the Premises from deteriorating
- B. Payment of utility expenses for utility service to the Premises, to the extent not paid for by subtenants.
- C. Payment of expenses for routine maintenance of the Premises, determined according to generally accepted accounting principles, consistently applied, but without any component for overhead.
- D. Retention by Tenant of 15% as compensation for Tenant's overhead in fulfilling its obligations under this Lease.
- E. Payment of up to \$150,000, the exact amount to be set annually by Landlord, to support community based programs on the Premises consistent with the Public Purpose.
- F. Payment of all premiums related to insurance required to be maintained for the Premises pursuant to Paragraph 10 of this Lease.
- G. Payment of all remaining funds into a reserve for replacements to maintain, repair, refurbish, and make capital improvements to the Premises according to a schedule set annually by Tenant and approved by Landlord. If Tenant and Landlord disagree, Landlord's determination controls.

4.02. No item in the Waterfall being eligible for money until all items above it have been satisfied entirely, unless Landlord otherwise consents in writing.

4.03. During a fiscal year, Tenant may tentatively comply with the Waterfall by paying or retaining gross rental revenue according to the budget called for in the next paragraph. But Tenant must adjust payments and retentions quarterly to bring what has been paid or retained into conformity with actual revenues both (A) as to

payments and retentions for the remainder of the year and (B) as to payments and retentions earlier in the year incorrectly distributed in light of actual experience. If actual experience shows that revenues were mis-distributed during a fiscal year, Landlord may require Tenant to adjust distributions in the following year or years to bring distributions in line with revenues according to the Waterfall.

4.04. On or before September 1, 2009 and not less than 60 days before each succeeding anniversary of the Commencement Date, Tenant must deliver to Landlord the following:

- A. Detailed budgets similar in format to that attached hereto and incorporated herein as **Exhibit B**, documenting all sources of revenue, all expenses broken down by program activity and identification of any other relevant financial details related to the operation of Avenida Guadalupe Association.
- B. A preventive maintenance plan identifying all building components and their service intervals, including copies of all professional service agreements for vendors retained by Tenant for Premises maintenance. If Tenant uses its employees for these tasks, then as part of the preventive maintenance plan, Tenant must identify what will be maintained by Tenant's employees and document that Tenant's employees are qualified and, if necessary, properly licensed, to do the required preventive maintenance.
- C. A 12-month leasing plan (i) identifying portions of the Premises that are currently vacant or scheduled to become vacant during the fiscal year, (ii) identifying time lines and management practices to ensure that all sub-leases are timely renewed, and (iii) setting out a marketing plan to minimize vacancies. Tenant must also develop and deliver to Landlord a standard form lease to be used for all sub-leases of the Premises.
- D. A capital improvement investment plan identifying any budgeted capital investment in the Premises over the 12-month fiscal year and also including projections for capital improvements over the next three years.
- E. A public use program cataloguing all activities that occurred in the prior 12 months in the public areas of the Premises and a schedule indicating potential program functions that will be occurring in those areas over the course of the subsequent 12 months. The schedule must include all revenues derived from fees collected as a result of these events, including costs incurred by the Tenant to administer these events. Included in this task is a detailed fee schedule outlining all charges to use the public areas, a marketing plan adequate in scope so that the surrounding neighborhood recognizes the

ability to use the public areas for functions, written policies establishing rules for using the public areas, and a standard from license agreement that Tenant will use for all organizations or individuals that will rent or otherwise use the public areas.

5. Term, Renewal.

5.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

5.02. If Tenant is not in default under the Lease, Tenant may renew this Lease for one 5-year term by giving Landlord six months prior written notice before expiration of the previous term, whether initial or renewal. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew and agreement between Landlord and Tenant on rent for the renewal term.

5.03. Renewal Terms are governed by this Lease just as the Initial Term, including rent.

6. Tenant's Affirmative Promises.

Tenant promises that it will:

6.01. Accept the Premises in their present condition, "AS IS."

6.02. Manage the Premises in a professional manner including maintenance of all facilities so as to maximize the revenue generated from Tenant's subleasing activities.

6.03. Semi-annually, Tenant must deliver to Landlord a tenant-aging report, identifying all tenant's currently subletting portions of the Premises, the amount of rent paid monthly by each subtenant, and any rent past due more than 30 days. The report will be cumulative for Tenant's fiscal year. The report must identify vacant space.

6.04. Within 120 days of the close of Tenant's fiscal year, which currently closes effective September 30th, Tenant shall provide Landlord with a detailed financial report in a compilation format as prepared by a Certified Public Accountant confirming the Tenant's complete financial situation for the 12-month period comprising that particular fiscal year. The first such detailed financial report must be delivered to Landlord no later than January 1, 2010. Landlord at its choosing may at

any time audit Tenant's complete financial documentation. Tenant must provide staff and any other assistance reasonably required by Landlord in the course of any audit. Landlord shall provide Tenant 30 days prior written notice of its intent to commence an audit.

6.05. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building.

6.06. Obtain and pay for all utility services used by the Premises with the exception of specific electrical meters serving the public access portions of the Premises identified as meter numbers XXXXX.

6.07. Allow Landlord to enter the Premises to inspect the Premises and Tenant's operations.

6.08. Repair, replace, and maintain all interior and exterior building components including, but not limited to (a) roof, (b) foundation, (c) walls, doors, corridors, and windows, (d) plumbing (including the entire length of the buried sewer lines) (e) HVAC, (f) wiring, and (g) other features, structures, or equipment serving the Premises. Landlord need not repair, replace, or maintain, any portion of the Premises. Tenant is specifically responsible for maintaining and assuring structural soundness of all Buildings in the Premises,

6.09. Maintain all landscaped areas, including maintenance and repair of any sprinkler systems, and keep the Premises is neat and free of debris.

6.10. After casualty loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

6.11. Submit in writing to Landlord any request for permission for Tenant to make structural modifications to any portion of the Premises . In the event Landlord does not approve Tenant's request or indicate in writing a specific object to Tenant's request, within 30 days of the date of Landlord's receipt of Tenant's request, then the request shall be deemed approved.

6.12. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

6.13. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need

not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

7. Indemnity.

7.01. These definitions apply to the indemnity provisions of this Contract:

7.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of (A) the condition of the Premises or (B) acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

7.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

7.01.03. "Indemnitor" means Tenant.

7.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

7.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

7.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

7.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's

hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

7.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

7.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

7.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

7.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

8. Tenant's Negative Promises.

Tenant promises that it will not:

8.01. Use the Premises for any purpose other than the Permitted Use.

8.02. Create a nuisance.

8.03. Permit waste.

8.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

8.05. Alter the Premises without Landlord's written consent as provided in Paragraph 6.11 herein.

8.06. Allow a lien to be placed on the Premises.

9. Alterations.

Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted. Provided however, if Tenant obtained Landlord's prior written permission to make the alteration or improvement, then Tenant shall not be obligated to remove the alteration or improvement upon termination of the Lease.

10. Insurance.

10.01. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord
2. Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	

- (e) Personal Injury Liability
- (f) Broad-Form Property Damage, to include Fire Legal Liability Coverage for replacement cost of all improvements on the Premises
- (g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises
- (f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises
- 4. Business Automobile Liability to include coverage for: Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence
 - (a.) Owned/Leased Automobiles
 - (b.) Non-owned Automobiles
 - (c) Hired Automobiles
- 5. Property Insurance for physical damage to the property of the Tenant, including improvements and betterments Coverage for replacement cost of Tenant's improvements.

10.02. Each insurance policy required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

Department of Capital Improvements
Management Services
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director"

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Landlord because of Tenant’s breach of representation, warranty, declaration, or condition of this policy.”

10.03. If Tenant makes leasehold improvements, Tenant must provide Builder’s Risk Insurance Coverage, Worker’s Compensation and Employer’s Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Landlord’s Risk Manager. The policies likewise must be in amounts required by Landlord’s Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord’s Risk Manager. In deciding whether to waive, Landlord’s Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

10.04. Within 30 days before the Commencement Date and promptly after Landlord’s later request, Tenant must, at its own expense, deliver certificates to Landlord’s Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory’s company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof. Landlord’s review and approval of a certificate does not waive the certificate’s noncompliance with the requirements of this Lease.

10.05. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

10.06. Nothing in this Lease limits Tenant’s liability for damages to persons

or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

10.07. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

10.08. Landlord need not insure any portion of the Premises. All risk of loss is allocated to Tenant.

11. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Tenant releases Landlord from claims arising from injury or loss to Tenant or to third parties to which Tenant is liable, if the injury or loss is covered by insurance Tenant is required by this Lease to maintain, whether or not Tenant actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require its insurers to waive subrogation for Covered Claims.

12. Environmental Matters.

12.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

12.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

12.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

12.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

12.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

12.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

12.07. Landlord may conduct, at Landlord's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants.

12.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

12.09. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses

incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants..

13. Landlord's Municipal Powers.

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

14. Prohibited Interests in Contracts.

14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

(ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Casualty/Total or Partial Destruction.

15.01. If the Premises are damaged by casualty and can be restored within 90 days, Tenant will, at its expense, restore the Premises in their entirety. Restoration must be to substantially the same condition existing before the casualty. If Tenant fails to complete the restoration within 90 days from the date of written notification by Landlord to Tenant of the casualty, Landlord may terminate this Lease by written notice delivered to Tenant before Tenant completes restoration obligations, complete the restoration, and recover the cost of completion from Tenant.

15.02. If the Premises cannot be restored within 90 days, Tenant has an option to restore the Premises. If Tenant chooses not to restore, this Lease will terminate and all insurance proceeds to be paid by Tenant's insurance carrier will be paid directly to Landlord.

15.03. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

15.04. If part of the Premises amounting to less than two of the buildings within the Premises are destroyed, and if Tenant chooses not to repair the destroyed buildings, the parties may amend this Lease to exclude the destroyed buildings from the Premises (though Tenant may be responsible for maintaining the grounds upon which the destroyed buildings previously existed) and the Lease can otherwise continue. Neither party is obligated to make such agreement.

16. Condemnation/Substantial or Partial Taking.

16.01. If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

16.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

16.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

17. Holdover.

If Tenant holds over after termination or expiration of this Lease, it is a Tenant at sufferance under the terms of this Lease.

18. Contractual Lien.

18.01. To secure the payment of any sums due to Landlord under this Lease and the full performance of this Lease by Tenant, specifically including retentions of sub-lease revenue by Tenant greater than that allowed by the Waterfall, Tenant grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

18.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale, provided, Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (b) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the

Landlord's disposition made according to this Lease.

18.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

19. Default, Remedies for Default.

19.01. If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

19.01.01. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord, but Tenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Tenant is in default for failure to pay regularly recurring Rent installments timely even if Landlord does not give notice.

19.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord, specifically including retentions of sub-lease revenue by Tenant greater than that allowed by the Waterfall, and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.

19.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against

Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

19.01.04. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

19.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

19.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

19.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

19.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

19.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

19.02. Remedies Upon Default. Upon the occurrence of any Tenant event of default, provided Landlord has provided timely written notice to Tenant in accordance with Paragraph 25.07 herein, Landlord has the option to pursue anyone or more of the following:

19.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. In that event, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

19.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.

19.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

19.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

- (i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,
- (ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord,
- (iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and
- (iv) Tenant must obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

19.03. Repossession and Alteration of Locks. Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

19.04. Effect of Termination. If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination.

19.05. Effect if No Termination. If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may

decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

19.06. **Liability for Costs Incurred.** If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

19.08. **Obligation to Reimburse.** If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

19.09. **Default by Landlord.** If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

19.10. **Payments After Termination.** Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such

payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

19.11. Rights Respecting Personal Property. If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

19.12. Delinquent Rents and Other Sums. Any amounts owing hereunder not paid within five days after they are due bear interest at the lesser rate of (i) the maximum nonusurious rate allowed by law or (ii) 18% per annum, the interest to accrue from the due date of the payment until received by Landlord. Similarly, if Landlord pays any obligations allocated to Tenant under this Lease, those amounts, if not repaid within five days of Landlord's demand, bear interest at the above applicable rate from the date of Landlord's advance until received by Landlord. In addition to the interest due on delinquent rents and other sums hereunder, if Tenant fails to make any payment when due, and such failure to pay continues for a period of five days (without any notice), then Tenant must pay, in addition to the amount due and owing, a late charge of 10% of such amount due and owing. The late payment charge is liquidated damages for Landlord's administrative inconvenience in dealing with late payments. The damages suffered by Landlord in case of a late payment are not capable of being ascertained precisely, but the foregoing charge is a reasonable and good faith estimate by the parties of the extent of the damage, which is

reasonably certain to occur. Receipt of the late payment charge does not void the occurrence of an event of default or eliminate any of Landlord's remedies therefor.

19.13. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

20. Warranty Disclaimer.

20.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

20.01. Tenant has been in possession of the Premises for several years under previous leases from Landlord, and Tenant's knowledge of the character and condition of the Premises is superior to the knowledge of Landlord as to such matter. Tenant accepts the Premises in their present condition, as-is.

21. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

22. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

23. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

24. Dispute Resolution.

24.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

24.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

24.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

24.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

24.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

24.06. Mediator fees must be borne equally.

24.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

25. Miscellaneous.

25.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

25.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

25.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

25.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

25.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

25.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

25.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

25.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or

neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

25.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

25.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

25.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

25.12. *Administrative Agreements.* All certificates, memoranda, and modifications of nonmaterial rights and obligations arising under this Lease, including annual Waterfall allocations, may be signed on behalf of Landlord and delivered to Tenant by the Director of Capital Improvements Management Services, without further council action.

25.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states the same number both as a lump sum and as a calculated number (as, e.g., rent per month or costs per square foot), if the lump sum conflicts with the calculated number, the calculated number controls.

25.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

26. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

27. Tenant Funding by Landlord.

27.01. From time to time, Landlord may give money to Tenant to further the purposes of this Lease ("Program Fund"). Program Funds are strictly for

reimbursement of money previously spent by Tenant. All requests for Program Funds must be submitted in writing to the Capital Improvement Management Services Real Estate Division and are subject to the Director or the Director's designees approval before payment.

27.02. Landlord will approve, and Tenant must use, Program Funds only for activities managed by Tenant that, in Landlord's sole discretion, promote the Public Purpose.

27.03. Before asking for Program Funds, Tenant must deliver to Landlord a detailed accounting of the reimbursements requested, specifically identifying any portion of the funds used for salaries or other compensation of Tenant's employees. Tenant must not ask for Program Funds more frequently than quarterly. Except in the first year of this Lease, no specific request for Program Funds may exceed 40% of the entire allocation for a specific year.

27.04. Landlord will give Tenant \$95,000 in Program Funds for the period from the Commencement Date through September 30, 2009. Tenant should not request additional Program Funds during this period. Landlord reserves the right to increase, decrease, or eliminate annual funding as Landlord deems appropriate.

In Witness Whereof, the parties have caused their representatives to set their hands.

City of San Antonio, a Texas
municipal corporation

Avenida Guadalupe Association, Inc. a
Texas non-profit corporation

Signature: _____

Signature: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

City Attorney